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BULLETIN

COMMISSIONER OF CAMPAIGN FINANCES AND PRACTICES

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COMMISSIONER
CAPITOL STATION
HELENA, MONTANA 59601
(406) 449-2942

No. 3 May 12, 1976

GENERAL

As reported by the news media, the recent decision of the Supreme Court of the United States in Buckley v. Valeo (424 U.S. 1, 46 L.Ed.2d. 659, 44 Law Week 4127) has affected enforcement of one section of the Montana Campaign Finance Act. Specifically, section 23-4795(3), R.C.M. 1947 has been rendered unenforceable due to that decision.

The Supreme Court held that restrictions on the amount a candidate may spend from his personal funds are an impermissable restraint on First Amendment rights. The Commissioner's determination in this matter is supported by an unofficial opinion of the Attorney General of Montana. For these reasons, section 23-4795(3) will not be enforced. No other section of the law is affected, and ALL funds spent by a candidate must, as before, be deposited in and expended through his campaign account.

ADOPTED RULE AMENDMENTS

Effective May 7th, 1976, certain administrative rules have been amended. The changes are set forth here, and copies of the rules as amended are available on request from this office.

MAC 44-3.10(6)-S1060 - Contribution, Definition:

(1) same
(2) same
(3) The term "contribution" does not include:
(d) The cost of any communication by any membership organization to its members, so long as such organization is not a primary political committee.

MAC 44-3.10(6)-S1080 - Expenditure, Definition:

(1) same
(2) The term "expenditure" does not include:
(c) The cost of any communication by any membership organization to its members, so long as such organization is not a primary political committee.

MAC 44-3.10(6)-S1090 - Political Committee, Definition:
(1) For the purposes of the definition of "political committee" as defined in section 23-4777(9), any combination of two or more individuals or a person other than an individual, is a political committee if it makes an expenditure:
(a) To or on behalf of a candidate, or a committee organized to support or oppose a candidate; or
(b) To support or oppose a ballot issue, or a petition for nomination, initiative, or referendum; or
(c) To a committee organized to support or oppose a ballot issue or a petition for nomination, initiative, or referendum; or
(d) As an earmarked contribution.
(i) Any combination of two or more individuals or a person other than an individual, who receives an expenditure which is made in a manner as specified in subsection 1(a) through (d), is a political committee and must report is as a contribution.

This amendment further clarifies and defines "political committee", and generally follows Advisory Opinion No. 76-001, which was summarized in Bulletin No. 1 and 2.

MAC 44-3.10(10)-S10170 - Incidental Political Committee, Filings Schedule, Reporting:
(2) ...
(a) If the incidental political committee is a firm, partnership, or other business entity, it need not report the original sources of the contributions so long as they were received in the normal course of business and were not gained, expressly or implicitly, for the purpose of being used, directly or indirectly, to influence an election.

A business entity may become a "political committee" by reason of a contribution, as outlined in S1090 above, but need not report the source of funds gained in the normal course of business.

MAC 44-3.10(10)-S10180 - Initial Report:
(1) ...
(a) For a candidate, the period covered begins on the date that the person first receives a contribution or makes an expenditure or gives consent for any other person to receive any contribution or make any expenditure, whichever is earlier, and ends on the closing date of books, as specified in MAC 44-3.10(10)-S10190, for the filing of the first pre-election report for an election at which the candidate's name appears on a ballot.

MAC 44-3.10(10)-S10180 - Initial Report, continued:
(b) For a political committee, the period covered begins on the date that the person first receives a contribution or makes an expenditure or gives consent for any other person to receive any contribution or make any expenditure, whichever is earlier, and ends on the closing date of books, as specified in MAC 44-3.10(10)-S10190, for the reporting period in which an expenditure, as specified in MAC 44-3.10(10)-S1090, subsections 1(a) through (d), is made. The schedule of reporting depends on the level of election at which the committee participates, as specified in MAC 44-3.10 (10)-S10160.

MAC 44-3.10(10)-S10300 - Earmarked contribution, reporting:
(1) For the purposes of section 23-4737 and these rules, a contribution made by a person to another candidate or political committee for the express or implied purpose of having all or part of that contribution expended on behalf of a candidate or expended to support or oppose a ballot issue or petition for nomination, initiative or referendum; or transferred to another candidate or political committee organized on behalf of a candidate or organized to support or oppose a ballot issue or petition for nomination, initiative, or referendum is an "earmarked contribution".

These excerpts from the rules represent only amended or added material, and not the entire rules. You should refer to the Montana Administrative Code for the complete rule, or contact the Commissioner's office for a complete copy. See the order coupon at the end of this Bulletin.

ADOPTED ADVISORY OPINIONS

At the meeting of the Advisory Committee on March 31, 1976, the following advisory opinions were adopted. Summaries appeared in the last issue of the Bulletin but minor changes were made in the final versions.

AO-76-006 Robert VanDerVere, Candidate

The distribution to voters of a cardboard nail file, as part of the campaign effort, does not violate section 23-4745, R.C.M. 1947, "Treating".

AO-76-007 Daphne Bugbee, State Senator

The cost of a letter sent by an incumbent who is not a candidate for re-election, which is paid for from personal funds, and which does not expressly advocate the re-election of the incumbent, is not a reportable "expenditure" under the Campaign Finance Act.

AO-76-008 Tom Winsor, Montana Chamber of Commerce

CONCLUSIONS: The Chamber is a non-profit corporation and distributes to its members material which discusses legislative issues and voting records of candidates. It publishes a periodical for sale or subscription which may advocate the election of a candidate or ballot issue.

(1) Section 23-4744, R.C.M. 1947, "Contributions by Corporations, Public Utilities and Ohters", is not violated by the distribution to members and affiliates of communications which advocate the support or election of a candidate or ballot issue.

(2) Section 23-4744, R.C.M. 1947, is not violated by distribution to anyone of material which merely discusses legislative issues and voting records.

AO-76-009 Joe Brand, Transportation Political Education League

TPEL collects voluntary political contributions from Union members and contributes to various political campaigns. As such TPEL is a Montana "political committee", as defined in the Campaign Finance Act, and must comply with the requirements of that Act.

NOTICE OF MEETING

10:00 a.m. - May 21, 1976
Room 437, Capitol Building
Helena, Montana

PRELIMINARY AGENDA

1. Adoption of Minutes of previous meeting.

2. Consideration of Proposed Advisory Opinion Draft.

P-76-010 Anaconda Concerned Citizens' Fund

CONCLUSIONS: Section 23-4744, R.C.M. 1947, is not violated by the establishment, administration, and solicitation of contributions to a separate, segregated fund to be used for political contributions, so long as funds contributed are the voluntary gifts of individuals.

By these actions, CCF will be a Montana "political committee" and must report financial transactions on the standard forms prescribed by the Commissioner.

If you wish to present your views or opinions on any matter scheduled on the agenda, you are invited to do so at the meeting or by calling 449-2942. In addition, written views may be submitted to the Advisory Committee, P. O. Box 39, Capitol Station, Helena, Montana 59601.

ORDER COUPON

Please use this coupon to request advisory opinions, proposed opinions, requests and rules listed on the agenda for the meeting. No charge for these is contemplated unless mailing and production costs continue to rise. Please be selective in your requests. Mail your requests to:

Commissioner of Campaign
Finances & Practices
P. O. Box 39
Capitol Station
Helena, Montana 59601

ADVISORY OPINIONS:

AO-76-006 _____

AO-76-007 _____

AO-76-008 _____

AO-76-009 _____

PROPOSED OPINIONS:

P-76-0k0 _____

ADOPTED RULE AMENDMENTS:

MAC 44-3.10(6)-S1060 _____

MAC 44-3.10(6)-S1080 _____

MAC 44-3.10(6)-S1090 _____

MAC 44-3.10(10)-S10170 _____

MAC 44-3.10(10)-S10180 _____

MAC 44-3.10(10)-S10300 _____

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